United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19107

ANNA HERMAN

Appellant,

v.

ANNACOSTIA CHRYSLER-PLYMOUTH, INC.,

Appellee.

Appeal From Judgment of the United States District Court

NATHAN L. SILBERBERG
1001 Pennsylvania Building
Washington, D. C. 20004
Attorney for Appellant

STATEMENT OF QUESTIONS PRESENTED

1. Should the District Court consider a motion for summary judgment when the movant failed to file a statement of undisputed material facts?

2. May summary judgment be granted in favor of a defendant in a negligence case when the record shows a dispute as to its ownership of the automobile involved?

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

As appears in the Complaint, this is a suit for $250,000.00 damages for negligence arising from an accident in the District of Columbia, involving citizens of the District. Jurisdiction below was properly in the United States District Court for the District of Columbia (11 D.C. Code 306) and jurisdiction of an appeal from its judgment is in this Court. (28 U.S.C. 1291).

STATEMENT OF CASE

Plaintiff, an elderly pedestrian, was struck while crossing Good Hope Road, S. E., in the District of Columbia on February 16, 1963, resulting in the amputation of one leg and other serious injuries.

David Addison, a defendant not involved in this appeal, drove the automobile. The Complaint alleged it was owned by Appellee but this was denied by Appellee.

In answers to Plaintiff's Interrogatories and to Appellee's Request for Admissions, Addison swore that he was then about to complete purchase of the automobile; that Appellee had agreed to provide liability insurance for him; that the car bore temporary tags, for which he had not paid; that Appellee kept its "interest in said vehicle intact for all intent and purposes"; and that, at the time of the accident, he was enroute to Appellee's place of business at its request, "on a mission inaugurated and requested to be accomplished by and for and by direction of defendant A. C. P., Inc."

Exhibit A, attached to Appellee's Motion for Summary Judgment, stated, "Title to car shall remain in Seller (Appellee) until all amounts owing hereunder are fully paid in cash." Only the down payment had been made.

Appellee denied it owned or controlled the automobile at the time of the accident. On this basis, it moved successfully for summary judgment.

STATUTES AND RULES INVOLVED

40 D.C. Code 424 — Whenever any motor vehicle . . . shall be operated upon the public highway of the District of Columbia, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be

the agent of the owner . . . and the proof of the ownership . . . shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner.

Rule 56, Federal Rules of Civil Procedure — (b) A party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in his favor . . . (c) . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 9(h), U. S. District Court — In addition to the points and authorities required by subparagraph (b) of this Rule there shall be served and filed with each motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure a statement of the material facts as to which the moving party contends there is not genuine issue.

STATEMENT OF POINTS

1. Rule requiring statement of undisputed material facts is proper requirement of motion for summary judgment, yet was ignored here.

2. Where the record indicates a genuine issue as to the ownership and control of the automobile involved in the accident, the trial court should not have ignored it by granting summary judgment.

SUMMARY OF ARGUMENT

1. Wisdom of rule requiring statement of undisputed facts clearly shown here.

2. Instead of leaving disputed issues of fact for trial, court ignored them or decided them in favor of Appellee.

ARGUMENT

1. District Court Should Dismiss Motion for Summary Judgment Where Moving Party Ignores Rule.

The District Court amended its own procedure in 1960 to require, over and above the supporting papers for other motions, that with a motion for summary judgment "there shall be served and filed . . . a statement of the material facts as to which the moving party contends there is no genuine issue . . . the Court may assume that the facts as claimed by the moving party are admitted without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition thereto."

Appellee's motion contained no statement of undisputed facts. It did have a "statement of facts" but this was an unsworn recitation of its version of the transaction, wholly ignoring the sworn statements of its co-Defendant, Addison.

This case makes abundantly clear the reason for the 1960 amendment. Failure to file a statement of material facts as to which there was no genuine issue should have led to denial of the motion.

2. Genuine Issue as to Ownership of Automobile Should Be Left to Jury.

Who actually owned the automobile at the time it struct Appellant?

The Complaint (Paragraph 3) alleges it was "owned and controlled" by Appellee. The Answer of the co-Defendant Addison ignored this allegation, although he admitted being the operator. Appellee's Answer denied the allegation, thereby putting the matter in issue.

Exhibit A attached to the motion for summary judgment says, inter alia, "Title to Car shall remain in Seller until all amounts owing hereunder are fully paid in cash."

In answer to Appellee's Request for Admissions, Addison swore he did not pay for the tags which were on the car when he took possession; that Appellee "did in fact keep their interest in said vehicle intact for all intent and purpose," and that "at the time involved he was in fact on a mission inaugurated and requested to be accomplished by and for and by direction of (Appellee)."

In Answers to Appellant's Interrogatories, Addison swore, "I was driving . . . at the request of the (Appellee) agent"; "I haven't got the title," and "was on my way to (Appellee) at their request to arrange closing of deal and insurance coverage."

These statements under oath clearly were against Appellee. That may explain their omission from Appellee's basis for its motion.

At the worst, they give rise to a genuine issue of fact. It was wholly improper for the trial court to have ignored this issue.

In *Edwards v. Mazor Masterpieces, Inc.*, (1961), ___ D.C. App. ___, 295 F.2d 547, this Court dealt with a summary judgment that had dismissed an action for the wrongful death of a child suffocated when a sofa bed closed on him. The record was replete with affidavits and depositions. In reversing that judgment this Court said:

> . . . Rule 56(c), F.R. Civ. P., . . . "authorizes summary judgment only where . . . it is quite clear what the truth is . . . the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Sartor v. Arkansas Gas Corp.*, 321 U.S. 620, 627. And "doubts as to the existence of a genuine issue of material fact must be resolved against the party moving for summary judgment." *Dewey v. Clark*, 86 App. D.C. 137, 143; 180 F.2d 766, 772.

CONCLUSION

The judgment should be reversed and the cause of action against Appellee set for trial, with costs.

Respectfully submitted,

NATHAN L. SILBERBERG
1001 Pennsylvania Building
Washington, D. C. 20004
Attorney for Appellant

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JOINT APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANNA HERMAN	:	
1403 Ridge Pl., S.E.	:	
Plaintiff,	:	
vs	:	Civil No. 834-63
ANACOSTIA CHRYSLER-PLYMOUTH, Inc.,	:	
1708 Good Hope Rd., S.E.,	:	
and	:	
DAVID S. ADDISON	:	
2313 North Capital St.,	:	
Defendants	:	

RELEVANT DOCKET ENTRIES

1963	
March 29	Complaint
May 8	Answer of deft #2; appearance of I. William Stempil
May 14	Interrogatories to deft #2 by pltf
June 12	Answer of deft #1; appearance of Sol Friedman
June 12	Request of deft #1 for admissions from deft #2
July 30	Answer of deft #2 to admissions requested by deft #1
July 30	Answer of deft #2 to interrogatories
Aug 2	Interrogatories of pltf to deft #1
Aug 21	Calendared
Aug 22	Answer of deft #1 to interrogatories
1964	

March 23	Certificate of readiness by pltf
March 31	Opposition of deft #1 to certificate of readiness
Apr 20	Recommendation of pretrial examiner sustaining opposition of deft Anacostia Chrysler to certificate of readiness
Sept 23	Motion of deft #1 for summary judgment
Sept 28	Opposition of pltf to motion for summary judgment
Sept 30	Reply of deft #1 to opposition of plts to motion for summary judgment
Oct. 5	Motion of defendant #1 for summary judgment, argued, Tamm, J.
Oct. 27	Order granting motion of deft Anacostia Chrysler for summary judgment, Tamm, J.
Nov. 27	Notice of Appeal

[Filed March 29, 1963]

COMPLAINT

(Negligence— Personal Injuries)

1. Upon information and belief, at all times hereinafter mentioned, Anacostia Chrysler-Plymouth, Inc., was and is a corporation doing business in the District of Columbia.

2. On the 16th day of February, 1963, in the 1300 block of Good Hope Rd., S.E., Plaintiff, a pedestrian, was struck by an automobile operated by Defendant Addison.

3. Upon information and belief, said automobile was owned and controlled by Defendant Anacostia.

4. Said striking was caused by the negligence and carelessness of Defendant.

5. By reason thereof, Plaintiff's left leg has been amputated and she has suffered and continues to suffer pain and severe injuries in other parts of her body, requiring hospital confinement, surgery, medical attention, nursing and medicines. Said injuries are, upon information and belief, permanent so that Plaintiff will not be able to resume the work of her livelihood.

WHEREFORE Plaintiff demands judgment against Defendants in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00), with costs.

Dated: March 29, 1963

NATHAN L. SILBERBERG
Attorney for Plaintiff

Plaintiff demands trial by jury.

[Filed May 8, 1963]

ANSWER OF DEFENDANT
ANACOSTIA CHRYSLER-PLYMOUTH, INC.

FIRST DEFENSE:

The Complaint fails to state a cause of action, either in law or in fact, against this defendant upon which relief can be granted.

SECOND DEFENSE:

This defendant admits the allegations contained in Paragraph 1 of the Complaint; denies the allegations contained in Paragraph 3; and is without knowledge or information to form a belief with respect to the allegations contained in Paragraphs 2, 4, and 5 and, therefore, denies the same.

THIRD DEFENSE:

This defendant denies all allegations of negligence and denies that the automobile allegedly operated by defendant, David S. Addison, was owned or controlled by this defendant.

FOURTH DEFENSE:

Each and every allegation not specifically admitted herein is denied.

SOL FRIEDMAN
Attorney for Defendant,
Anacostia Chrysler-Plymough, Inc.

March 23	Certificate of readiness by pltf
March 31	Opposition of deft #1 to certificate of readiness
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Dated: March 29, 1963

NATHAN L. SILBERBERG
Attorney for Plaintiff

Plaintiff demands trial by jury.

[Filed May 8, 1963]

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THIRD DEFENSE:

This defendant denies all allegations of negligence and denies that the automobile allegedly operated by defendant, David S. Addison, was owned or controlled by this defendant.

FOURTH DEFENSE:

Each and every allegation not specifically admitted herein is denied.

SOL FRIEDMAN
Attorney for Defendant,
Anacostia Chrysler-Plymough, Inc.

[Filed May 14, 1963]

INTERROGATORIES TO DEFENDANT ADDISON

Pursuant to Rule 33, Federal Rules of Civil Procedure, Plaintiff requests that Defendant David Addison answer under oath each of the following Interrogatories and file said answers with the Court and serve a copy thereof upon counsel for the other parties herein within fifteen days of service hereof:

1. On the morning of Feb. 17, 1963, where were you driving from and to immediately prior to the accident upon which this suit is based?

2. Was anyone with you? If so, please state the name and address of such person and his relationship to you.

3. Where were you, within the 1300 block of Good Hope Road, S.E., when you first observed a pedestrian, subsequently identified as Plaintiff.

4. Where was said pedestrian at that time?

5. What distance was there between you and Plaintiff at that time?

6. What did Plaintiff do between your first observation of her and the actual impact?

7. What did you do in the same period identified in the preceeding paragraph?

8. At what speed were you then traveling?

9. Did you apply your brakes? If so, and they left a skid mark, please state the length of such mark, its direction and the wheel by which it was made.

10. Did anything interfere with your visibility on that occasion? If so, please specify.

11. Where did the impact occur with reference to the nearest curb line of Good Hope Road and with reference to the nearest intersection?

12. What part of your car came into contact with Plaintiff?

13. Was any other vehicle or person involved in this accident? If so, please explain.

14. According to you, how did Plaintiff happen to be struck?

15. How long have you been licensed to operate a motor vehicle?

16. Did you wear glasses at the time of the accident?

17. Was your driver's license conditioned and if so, what condition?

18. Had you owned a vehicle prior to that involved in this accident? If so, please identify the same and state the disposition thereof.

19. When, from whom and under what terms did you obtain posession of the vehicle involved in this accident?

20. Did you arrange for insurance coverage of any kind? If so, please describe the nature of such arrangement, with whom made, any documents showing such arrangement and what happened thereof.

21. On what date did you obtain title to said automobile?

22. Did you have any difficulty with the functioning or operation of said automobile up to the time of the accident? If so, please describe the same and what you did about it.

23. Were any photographs taken by or for you of the scene of the accident or of your automobile immediately subsequent thereto? If so, please state by whom and in whose possession they now are.

24. State the name and address of every person known to you who was a witness to said accident or any material fact relating thereto.

25. At the time of the accident, were you engaged in any mission, errand, employment or assignment for any other person? If so, please specify for whom and the nature thereof.

[Filed June 12, 1963]

ANSWER OF THE DEFENDANT
DAVID ADDISON

The defendant David Addison by and through counsel answers the complaint made against him by the plaintiff herein thusly:

1: He admits that on February 16, 1963 that he was the operator of an automobile in the 1300 block of Good Hope Road, S.E., Washington, D.C.

2. The defendant Addison denies that he was or is in any way responsible for any injuries suffered by the plaintiff as a result of his operation of an automobile on the date aforesaid.

3. The plaintiff has not stated a cause upon which recovery can be had against him and therefore prays that the complaint be dismissed as against him.

4. The defendant Addison denies any striking of the plaintiff by him as against the plaintiff which was caused by his carelessness or his negligence.

5. The defendant Addison demands strict proof of the Plaintiff's # 5 allegation and again denies that he is in any way responsible for her injuries and denies that he was in any way negligent in the operation of the automobile noted herein.

WHEREFORE, since the complaint has been answered by the defendant David Addison he asks this Honorable Court to dismiss the complaint against him in toto.

I WILLIAM STEMPIL
attorney for Defendant, Addison

[Filed June 12, 1963]

REQUESTS FOR ADMISSIONS

Defendant, Anacostia Chrysler-Plymouth, Inc., requests the defendant, David S. Addison, to make the following admissions for the purpose of this action only and subject to the pertinent objections to admissibility which may be interposed at trial, in accordance with the Federal Rules of Civil Procedure.

1. Defendant, David S. Addison, admits that on February 14, 1963, he entered into a contract whereby he purchased a new 1963 Plymouth 4-Dr. Sedan, bearing serial number 3336-152625 from defendant, Anacostia Chrysler-Plymouth, Inc.

2. On February 14, 1963, defendant, Anacostia Chrysler-Plymouth, Inc. caused to be issued to defendant, David S. Addison, temporary tags bearing number DX 73118 with the expiration date of February 23, 1963, the said tags being issued by the Government of the District of Columbia to David S. Addison, 3313 North Capitol Street, Washington, D.C., as owner of a 1963 Plymouth "Fury" 4-Dr. Sedan, bearing serial number 3336-152625, and David S. Addison paid the prescribed fee for the issuance of said temporary tags.

3. David S. Addison admits that commencing with the execution of the contract referred to hereinabove and after delivery of said vehicle that he was the sole registered owner of the aforesaid vehicle, and that defendant, Anacostia Chrysler-Plymouth, Inc. had no ownership in said vehicle nor did it have any control thereof.

4. Defendant, David S. Addison, admits that on February 16, 1963, he was the sole owner and operator of the aforementioned vehicle in the 1300 Block of Good Hope Road, S.E., Washington, D.C., at which time said vehicle was involved in an accident with the plaintiff, Anna Herman. At the time of said accident, defendant, David S. Addison, was on a mission of his own and was operating said vehicle in his own behalf and not at the direction or benefit of defendant, Anacostia Chrysler-Plymouth, Inc.

[Filed July 30, 1963]

ANSWERS TO INTERROGATORIES BY
DEFENDANT ADDISON

To the interrogatories propounded, the defendant Addison, under oath makes the following answers:

1. I was driving from 2313 N Cap St to Anacostia-Plymouth, Inc. at the request of the A.C.P. agent.

2. I was alone

3. I was almost to the point where the plaintiff was injured.

4. In the street behind a parked car-not on the sidewalk.

5. About three car lengths.

6. Walked towards the center of the street then moved as tho she was going to stop then continued on again-she hesistated.

7. I applied the brakes and swerved to avoid hitting and being hit by a 55 or 56 Chevrolet which had suddenly veered into and blocked my path of travel.

8. Less than 20 miles per hour.

9. Yes; -about two feet on the rear wheels.

10. Yes, the 55 or 56 Chev. which blocked my path.

11. Four feet from curb in middle of block.

12. Right front bumper and fender.

13. Yes, the parked car which was where the plaintiff was standing and moving when first seen by me.

14. She was jaywalking in the middle of the block.

15. Three yrs.

16. Yes.

17. No.

18. No.

19. Through Jay Willis, salesman of A C P Inc. on Feb. 14, 1963.

20. Yes, through Jay Willis who agreed at time of sale to handle this for me. All coverage necessary other than that required by finance company.

21. I haven't got the title.

22. No.

23. Photographs were taken by the police and they have them.

24. Jay Willis of A.C.P. Inc.

25. I was not on any errand for any other person but was on my way to A.C.P. Inc. at their request to arrange closing of deal and insurance coverage.

DAVID ADDISON

[Jurat dated 10-15-65]

[Filed July 30, 1963]

ADMISSIONS AND ANSWERS TO ADMISSIONS REQUESTED BY DEFENDANT A.C.P. INC. MADE BY DEFENDANT ADDISON

Under oath, the defendant David Addison answers the request for admissions propounded by defendant A.C.P. Inc. as follows:

1. Defendant David Addison admits he entered into a contract to purchase a 1963 four door Plymouth Sedan serial No. 3336-152625 from Defendant A.C.P., Inc.

2. Defendant David Addison admits the statement requested of him under admission #2 up to the part where it states that David Addison paid the prescribed fee for the issuance of the temporary tags. To that part he does not admit such statement since he did not — pay for the issuance of such temporary tags — not did he ever receive the temporary tags from the District of Columbia Government. The tags (temporary tags) were already on the car when he arrived at A.C.P. Inc. and at no time did the defendant David Addison make any visit to any D.C. agency to secure the issuance of the tags.

[Filed July 30, 1963]

ANSWERS TO INTERROGATORIES BY
DEFENDANT ADDISON

To the interrogatories propounded, the defendant Addison, under oath makes the following answers:

1. I was driving from 2313 N Cap St to Anacostia-Plymouth, Inc. at the request of the A.C.P. agent.

2. I was alone

3. I was almost to the point where the plaintiff was injured.

4. In the street behind a parked car-not on the sidewalk.

5. About three car lengths.

6. Walked towards the center of the street then moved as tho she was going to stop then continued on again-she hesistated.

7. I applied the brakes and swerved to avoid hitting and being hit by a 55 or 56 Chevrolet which had suddenly veered into and blocked my path of travel.

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9. Yes; -about two feet on the rear wheels.

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12. Right front bumper and fender.

13. Yes, the parked car which was where the plaintiff was standing and moving when first seen by me.

14. She was jaywalking in the middle of the block.

15. Three yrs.

16. Yes.

17. No.

18. No.

19. Through Jay Willis, salesman of A C P Inc. on Feb. 14, 1963.

20. Yes, through Jay Willis who agreed at time of sale to handle this for me. All coverage necessary other than that required by finance company.

21. I haven't got the title.

22. No.

23. Photographs were taken by the police and they have them.

24. Jay Willis of A.C.P. Inc.

25. I was not on any errand for any other person but was on my way to A.C.P. Inc. at their request to arrange closing of deal and insurance coverage.

DAVID ADDISON

[Jurat dated 10-15-65]

[Filed July 30, 1963]

ADMISSIONS AND ANSWERS TO
ADMISSIONS REQUESTED BY
DEFENDANT A.C.P. INC.
MADE BY DEFENDANT
ADDISON

Under oath, the defendant David Addison answers the request for admissions propounded by defendant A.C.P. Inc. as follows:

1. Defendant David Addison admits he entered into a contract to purchase a 1963 four door Plymouth Sedan serial No. 3336-152625 from Defendant A.C.P., Inc.

2. Defendant David Addison admits the statement requested of him under admission #2 up to the part where it states that David Addison paid the prescribed fee for the issuance of the temporary tags. To that part he does not admit such statement since he did not — pay for the issuance of such temporary tags — not did he ever receive the temporary tags from the District of Columbia Government. The tags (temporary tags) were already on the car when he arrived at A.C.P. Inc. and at no time did the defendant David Addison make any visit to any D.C. agency to secure the issuance of the tags.

3. David Addison cannot answer request for admission #3 in the affirmative because the alleged contract and all other papers involved indicate that A.C.P. Inc. did in fact keep their interest in said vehicle intact for all intent and purposes.

4. Defendant David Addison cannot answer admission request #4 in the affirmative because at the time involved he was in fact on a mission inaugurated and requested to be accomplished by and for and by direction of the defendant A.C.P. Inc.

DAVID ADDISON

[Jurat dated 10-15-65]

[Filed August 2, 1963]

INTERROGATORIES TO DEFENDANT ANACOSTIA

Pursuant to Rule 33, Federal Rules of Civil Procedure, Plaintiff requests that Defendant Anacostia Chrysler-Plymouth, Inc., through an officer having knowledge of the facts, answer each of the following Interrogatories and file said answers with the Court and serve a copy thereof upon counsel for the other parties hereto within fifteen days of service hereof.

1. Who are the officers and directors of your corporation?

2. Was one Jay Willis employed by or associated with you in or about February, 1963? If so, please state his title and the scope of his duties.

3. Did your corporation negotiate the sale of a Plymouth Fury to Defendant Addison? If so, who participated in those negotiations on your behalf, when were they begun and when were they completed? Please submit copies of bill of sale, invoice or other documents evidencing such negotiations.

4. When did you deliver possession of said automobile to Addison?

5. Was insurance coverage of any kind included in the aforesaid negotiations? If so, please state the details thereof and what was done pursuant thereto.

6. Did anyone in your corporation request Addison to drive said automobile to your premises on the morning of Feb. 17, 1963? If so, who made such request and for what purpose?

7. Did you prepare Temporary Tags DX 73118 and place them on said automobile? If so, when and how did you inform the Division of Motor Vehicles of such issuance? If in writing, please furnish a copy.

8. Was title to the said automobile transferred by you? If so, please state the date of transfer, the name of the transferee and how notification of such transfer was given to him and to the Division of Motor Vehicles. If in writing please furnish copies.

[Filed August 22, 1963]

ANSWERS TO INTERROGATORIES BY
ANACOSTIA CHRYSLER-PLYMOUTH, INC.

1. W. Lee Koetzle, President; Joseph B. Moore, Vice-President; Stephen M. Bodell, Secretary-Treasurer.

2. Yes; new car sales' representative.

3. Yes, Jay Willis; began negotiations for purchase on or about January 30, 1963; terms agreed to on or about February 10, 1963 and sale consummated and delivery made on February 14, 1963.

4. Thursday, February 14, 1963.

5. Yes, $100.00 deductible collision, comprehensive, Class 2-C.

6. No.

7. Yes; copy of Special Youth Certificate (for temporary tags) mailed to Department of Motor Vehicles on February 15, 1963.

8. Yes; assignment made on February 15, 1963 from Anacostia

Chrysler-Plymouth, Inc. to David S. Addison. Transfer of title was handled by Mr. R. Edwards Title Service.

[Filed September 23, 1964]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, Anacostia Chrysler-Plymouth, Inc., by its attorney and moves for summary judgment in its favor upon the ground that there is no genuine issue as to any material fact and the defendant is entitled to judgment as a matter of law for the defendant, Anacostia Chrysler-Plymouth, Inc. had no right, title, interest or control of the 1963 Plymouth operated by defendant, David Addison, at the time of the accident which gives rise to these proceedings; said ownership and control having been transferred to said David Addison on February 14, 1963 with a security interest to Commercial Credit Corporation of Washington, D.C.

STATEMENT OF FACTS

At the time of the accident on February 16, 1963 the defendant, Anacostia Chrysler-Plymouth, Inc., had no right, title, interest or control of the 1963 Plymouth operated by defendant, David Addison, having parted with equitable and legal title prior thereto.

On February 14, 1963 the defendant, Anacostia Chrysler-Plymouth Inc., and the defendant, David Addison entered into a conditional sales contract whereby said David Addison acquired all the incidents of ownership of the 1963 Plymouth sedan here involved. See Exhibit "A" attached hereto. David Addison took possession of this automobile on this date. (See Answer No. 19 of defendant, Addison's Answers to Interrogatories propounded by the Plaintiff). (See also Answer No. 4

of defendant, Anacostia Chrysler-Plymouth, Inc., of Answers to Interrogatories propounded by Plaintiff). On the same date the security interest or legal title to said vehicle was transferred by Anacostia Chrysler-Plymouth, Inc., to the Commercial Credit Corporation.

As a result of the above transactions on February 14, 1963 said David Addison filed an Application for a Certificate of Title for a Motor Vehicle or Trailer with the District of Columbia Department of Motor Vehicles and signed as owner. Said document clearly shows acquisition or ownership by defendant, Addison on February 14, 1963 and shows the first and only lien holder to be Commercial Credit Corporation, both parties having derived their respective interests from Anacostia Chrysler-Plymouth, Inc. See Exhibit "B" attached hereto.

On February 16, 1963 the date on which the accident in question occurred, Anacostia Chrysler-Plymouth, Inc., had divested itself of all legal and equitable interest in the said automobile.

RETAIL INSTALLMENT CONTRACT

No. ...

...(City and State) ...(Date) 19.. ...

TRANS. NO.

AVOID MISTAKE - FILL OUT COMPLETELY

Between ...(Print Purchaser's Name) ...(No., Street, Route or Box) ...(City or Town) ...(County) ...(State) Purchaser,

And ...(Dealer's Name) ...(Give Correct Legal Address) ...(City) ...(State), Seller.

Purchaser (meaning all of undersigned, jointly and severally) hereby purchases from Seller on the terms and conditions set forth below, and on reverse side, and Purchaser acknowledges delivery, examination and acceptance of the motor vehicle and equipment (herein called "Car") described below, in its present condition, for the **Time Price** of $..., less **Total Down Payment** of $..., leaving a **Time Price Balance** of $..., which Purchaser agrees to pay to the order of Seller at the office of Commercial Credit Corporation at ...in monthly payments or unequal payments as indicated below: until the Time Price Balance is paid in full, with a delinquency charge on each installment in default for a period of more than ten days in an amount not in excess of five per cent (5%) of each such installment or five dollars ($5.00), whichever amount is less, or in lieu thereof, interest on each such installment at a rate not in excess of eight per cent (8%) per annum.

Car will be kept at No. ...Street, ...(City), ...(State)
Purchaser agrees not to remove Car permanently from the filing district in which said address is located without the written consent of Seller.

1. Make	Serial No.	Motor No.	Model No.	Year	New-Used	Will Car Be Used For Pleasure, Business, Taxicab or Hire?	Type of Body	If Truck, Truck Questionnaire Must Be Attached

Extra Equipment:	Transmission	Brakes	Steering	Radio	Heater	Air Cond.	Other
	Regular ☐ Automatic ☐	Mech. ☐ Power ☐	Mech. ☐ Power ☐	Yes ☐ No ☐	Yes ☐ No ☐	Yes ☐ No ☐	

SUMMARY OF INSURANCE COVERAGE

Insurance does not cover injury to persons and damage to property of others.

(Check Proper Coverage)

Fire and Broad Form Theft ☐

Comprehensive ☐

Combined Additional Coverage ☐

$... Deductible Collision ☐

Credit Life Insurance—Extent of Coverage Unpaid Portion of Time Balance Payable to Holder. ☐

Expires: Due date of final installment unless cancelled on prepayment.

Name of Insurance Agent or Broker (if any) ...

2. Cash Sale Price Including Extra Equipment		$
3. Total Cash Delivered Price (If sold for Cash)		$
4. Cash on or before Delivery	$	
Allowance on Trade-in	$	
Make		
Model ... Year		
Total Down Payment		$
5. Total Cash Price Balance		$
6. Cost of Insurance		$
7. Governmental Charges		$
Notarial Fees		$
Recording Fees		$
8. Principal Balance		$
9. Finance Charges		$
10. Time Price Balance		$
11. Payable to the order of Seller (a) in		

...monthly installments of $..., each, the first installment payable ... (Month) (Day) (Year) and each successive installment payable on the same date of each and every month thereafter, (If no date is inserted in blank, the first installment is payable one month from date of contract) or (b) unequal payments as ...until the Total Time Price is paid in full, with interest after maturity at the highest legal contract rate.

The Total Time Price is the sum of Total Down Payment (4) and Time Price Balance (10).

By executing this contract Purchaser represents and warrants that he has been quoted both a time price and a lesser cash price and has elected to buy the car described herein for the higher time price and all negotiations leading up to the consummation of this transaction are merged into the terms and conditions of this contract which exclusively evidences the agreement and obligation.

By signature below seller hereby accepts this contract and certifies that the information contained herein and required by Regulations of the Commissioners of the District of Columbia to be shown herein is true.

DESIGNATION OF INSURED

If the cost of any insurance, other than insurance on the Car, is included in the Total Time Price, Purchaser designates the individual whose signature first appears below as the person to be insured thereby.

NOTICE TO PURCHASER: It is against the law for the Seller to permit or request you to sign this document before all blanks have been filled in by the Seller and he has signed this paper certifying that the above information is correct.

FORM 1508 49—DISTRICT OF COLUMBIA ... DUPLICATE—FOR DEALER—NON-TRANSFERABLE

EXHIBIT A

TERMS AND CONDITIONS

Title to Car shall remain in Seller until all amounts owing hereunder are fully paid in cash. This contract may be assigned by Seller or the payment thereof renewed or extended, without passing title to Car to Purchaser. The loss, injury or destruction of Car shall not release Purchaser from payment hereunder. Purchaser agrees to obtain, keep in force and deliver to Seller fire, theft, c.a.c., or comprehensive, and collision insurance on the Car and other insurance requested by Seller. Such insurance shall be in form, amount and written by insurers satisfactory to Seller. Seller, as creditor and holder of an insurable interest, is authorized to purchase any and all such insurance, at Purchaser's expense, whether or not included herein. If the cost of such insurance is not included herein and Purchaser does not deliver such insurance to Seller within 15 days from the date hereof, or prior to termination of any delivered insurance, then Seller may purchase same and Purchaser agrees to reimburse Seller for the cost thereof on demand with interest at the highest legal contract rate. Purchaser hereby assigns to Seller the proceeds of all such insurance (including any refund of premiums) to the extent of the unpaid portion of the Total Time Price Balance, directs any insurer to make payment directly to Seller, appoints Seller as Attorney in Fact to endorse any draft, and authorizes Seller to apply such proceeds to the payment of instalments due or to become due hereunder.

Purchaser agrees: To pay promptly all taxes and assessments upon Car and/or for its use or operation and or on this contract; to keep Car free from liens; that all equipment, tires, accessories and parts shall become part of Car by accession; and not to sell, transfer or encumber Car or use it for hire or illegally. Time is of the essence hereof. Any notices to Purchaser shall be sufficiently given if mailed to the address of Purchaser shown herein. Purchaser warrants that the automobile traded in, if any, is free from any encumbrance, and breach of this warranty shall be a breach of this contract.

This contract may be assigned by Seller, and when assigned, all rights of Seller shall vest in its assignee and this contract shall be free from any claims or defenses whatsoever which Purchaser may have against Seller. All payments or other monies then owing hereunder shall be paid by Purchaser to the assignee without recoupment, set-off or counterclaim, either in law or in equity, and any payments otherwise made shall be at the risk of Purchaser if not received by the assignee.

Purchaser may not transfer his equity in Car without the written consent of Seller or its assignee. Upon giving such consent, Seller or its assignee shall be entitled to a transfer of fee not exceeding ten per cent of the remaining unpaid balance, or $25.00, whichever is less.

If Purchaser defaults in any obligation [illegible] warranty under this contract, the unpaid portion of the Total Time Price Balance shall, without notice at the option of Seller, become forthwith. Purchaser agrees in any such case, to pay said amount Seller, upon demand, or, at the election of Seller, to deliver Seller may, without notice or demand for performance process, enter any premises where Car may be found, and take possession of it, provided car can be repossessed without a breach peace. Seller may retain all payments made by Purchaser as compensation for the use of Car while in Purchaser's possession. Any personal property in Car at the time of repossession may be held temporarily by Seller for Purchaser, without liability therefor, and may sell the Car at private or public sale (at which Seller may be the purchaser), in accordance with the laws of the State where such sale is made. The proceeds of any such sale, less all expenses, including, but not being limited to, expenses of repossession, repair and resale, shall be credited on the amount payable hereunder. Purchaser shall pay any remaining balance forthwith as liquidated damages for the breach of this contract, and shall receive any surplus. If this contract is referred to an attorney for collection or enforcement, Purchaser agrees to pay an amount equal to 15% of the sum appearing unpaid hereon as an attorney's reasonable fee, plus court costs, and other actual and reasonable out of pocket expenses incurred by the holder as the result of such delinquency.

Any action to enforce payment hereunder or any indulgences or rearrangements granted Purchaser shall not be a waiver of or affect any rights of Seller. Purchaser, in applying for Certificate of Title to Car, shall make reference to Seller's rights under this contract, and Purchaser shall deliver or cause to be delivered such Certificate to Seller, when received. Seller hereby is authorized to correct patent errors or omissions in this contract. All rights and remedies hereunder are cumulative and not exclusive. The parties hereto agree that this contract shall in all cases be governed by and interpreted in accordance with the laws of the District of Columbia, and that the rights and liabilities of the parties hereto shall be determined and enforced in accordance therewith. Any part of this contract contrary to the law of the District of Columbia shall not invalidate other parts of this contract therein.

This contract constitutes the entire agreement between the parties, and no changes herein shall be valid unless in writing, signed by Purchaser and the owner hereof. Car is accepted without any expressed or implied warranties, except as expressly set forth herein.

DEALER'S ASSIGNMENT

FOR VALUE RECEIVED, Undersigned hereby sells, assigns and transfers to Commercial Credit Corporation, its successors and assigns, the contract on the reverse side hereof, and all of Undersigned's right, title and interest in and to the Car referred to therein, with power to take legal proceedings in the name of Undersigned or itself.

Undersigned warrants that: the contract on the reverse side hereof is genuine and constitutes the entire agreement with the Purchaser; the Purchaser is over 21 years of age and competent; the contract is legally enforceable against the Purchaser named therein; the down payment was made by the Purchaser in cash and not its equivalent, unless otherwise noted in the contract; no part of the down payment was loaned to the Purchaser, directly or indirectly, by Undersigned or anyone connected with Undersigned; unless noted herein, Undersigned has no reason to believe that Purchaser ever violated any laws concerning liquor or narcotics or that Purchaser was ever rejected by any finance company, bank or banker; Undersigned has complied with all laws with respect to the sale of the Car; by this assignment, Undersigned transfers clear title to the Car, subject only to the contract; the lien represented by the contract appears on the Certificate of Title or Bill of Sale, as required by State law covering the Car at a first lien or encumbrance; there is now owing the amount set forth therein; and that all the obligations of Undersigned contained in the contract have been fully performed. Undersigned makes said warranties for the purpose of inducing Commercial Credit Corporation to purchase the contract, and if any of such warranties should be untrue, Undersigned shall buy the contract from Commercial Credit Corporation, upon demand, and will pay therefor, the amount unpaid to Commercial Credit Corporation thereon, plus any and all costs and expenses paid or incurred by Commercial Credit Corporation in respect thereto. Said remedy shall be cumulative and not exclusive and shall not affect any other right or remedy that Commercial Credit Corporation might have at law or in equity. Undersigned agrees that Commercial Credit Corporation, by purchasing the contract, shall not be deemed to have assumed any of the obligations of Undersigned thereunder which are executory.

Commercial Credit Corporation is hereby authorized to correct patent errors in said contract and all other papers executed, endorsed or assigned in connection therewith.

Signed and sealed this 15th day of Feb, 1963

ANACOSTIA CHRYSLER-PLYMOUTH, INC. (Seal)

(Dealer Sign Here)

Stephen M. Brooks (Seal)

(Owner, Officer or Firm Member)

Sec'y-Treasurer

A NEW CERTIFICATE OF TITLE MUST BE OBTAINED WITHIN 5 BUSINESS DAYS AFTER PURCHASE OF VEHICLE

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLES
301 C Street, Northwest, Washington 1, D.C.

ANSWER FULLY EVERY QUESTION

APPLICATION FOR A CERTIFICATE OF TITLE FOR A MOTOR VEHICLE OR TRAILER

Title No. [illegible]

1 PRINT YOUR FULL NAME IN CAPITALS (DO NOT USE INITIALS): David C. Addison

2 DATE OF BIRTH: MONTH 5 | DAY 9 | YEAR 1940 — SEX: MALE x | FEMALE — MY OPERATOR'S PERMIT OR OPERATOR'S LICENSE IS: DISTRICT OF COLUMBIA No. [illegible]94079 | OTHER STATE IF ANY: No. — NAME OF STATE

3 RESIDENCE ADDRESS: 3313 N. Capitol St. NE (NO. / STREET) Wash. 2, DC (CITY / ZONE / DISTRICT OR STATE)

4 BUSINESS ADDRESS: (NO. / STREET / SECTION / CITY / ZONE / DISTRICT OR STATE)

THE OWNER OF THE FOLLOWING DESCRIBED MOTOR VEHICLE OR TRAILER HEREBY MAKE APPLICATION FOR A CERTIFICATE
OWNERS OF TITLE FOR SAME AND FOR THAT PURPOSE STATE UNDER OATH THE FOLLOWING FACTS

DESCRIPTION OF MOTOR VEHICLE OR TRAILER

5. MAKE OF VEHICLE: PLY. "VS" — KIND (NEW OR USED): New — MODEL (LETTER OR NO): Fury — YEAR (AS GIVEN BY MANUFACTURER): 1963 — BODY: 4 dr. sedan

6 SERIAL NO.: 3336- 152625 — ENGINE NO: — NOS ALTERED OR DEFACED: no

7 IF PASSENGER MOTOR VEHICLE INSERT MANUFACTURER'S SHIPPING WEIGHT, INCLUDING AUTOMATIC TRANSMISSION, IF ANY: 3373 LBS

IF COMMERCIAL MOTOR VEHICLE INSERT MANFACTURER'S SHIPPING WEIGHT OF CHASSIS PLUS WEIGHT OF CAB AND OR BODY: _____ LBS.

8 [X] GASOLINE [ ] DIESEL [ ] BUTANE [ ] STEAM [ ] ELECTRICITY [ ] OTHERS

SOURCE OF OWNERSHIP

9. (WE) ACQUIRED SAME: New (NEW OR USED) ON 2/14/63 (MONTH / DAY) 19__ (YEAR) BY Cash, Trade, C/S (CASH / CASH AND TRADE / CASH AND CONDITIONAL SALE / TRADE AND CONDITIONAL SALE, INHERITANCE GIFT)

FROM: ANACOSTIA CHRYSLER-PLYMOUTH INC. (NAME) (CITY) DC 20 (DISTRICT OR STATE)

EDWARD

IF DEALER'S SPECIAL USE TAG WAS ISSUED IN CONNECTION WITH PURCHASE OF VEHICLE, INSERT
TAG NO _____ DATE ISSUED _____

IF NEW CAR TOTAL PURCHASE PRICE WITHOUT DEDUCTION FOR TRADE IN OR IF USED CAR FAIR MARKET VALUE $ 2930.00

10 IS THERE AN EXISTING LIEN? yes (YES OR NO)

	AMOUNT	KIND, CONDITIONAL SALE ETC	DATE	FAVOR OF—NAME ADDRESS
A	$ 3[illegible]1.20	C/sales	2/14/63 - - - - -	COMMERCIAL CREDIT CORP. [illegible] AVENUE WASHINGTON 21 D. C.
B				

IMPORTANT—Applicant must sign and complete back of this form.

DO NOT WRITE IN BLOCKS BELOW

REGISTRATION FEE	ID FILE CLERK	[illegible]	D C TREASURER
CLASSIFICATION OF VEHICLE		Received [illegible] D. C. FEB 18 1963	
RUNNER	TAGS ASSIGNED	CERTIFICATE OF TITLE MAILED TO APPLICANT	LIEN HOLDER FEB 21 1963

DMV 52-1 (Rev

IMPORTANT!

Applicants must sign the following affidavit before a Notary Public

10 SIGNATURE OF APPLICANT [illegible]

IF OWNER IS A NATURAL PERSON HE MUST SIGN IN HIS OWN NAME AND [illegible]

IF OWNER IS A PARTNERSHIP OR CORPORATION APPLICATION MUST BE SIGNED IN THE NAME BY AN OFFICER [illegible]
[illegible] TITLE REGULATIONS)

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF Feb. 19[illegible]

AND AFFIXED MY SEAL IN THE DISTRICT OF COLUMBIA PERSONALLY APPEARED [illegible]

AND MADE OATH IN DUE FORM OF LAW THAT HIS STATEMENTS MADE IN THIS APPLICATION ARE TRUE

GIVEN UNDER MY HAND AND NOTARIAL SEAL [illegible]

SEAL My Commission Expires March 14, 1955

NOTARY PUBLIC

FALSE STATEMENTS AND FORGERY — THE MAKING OF ANY FALSE STATEMENT IN THIS APPLICATION OR [illegible]
INSTRUMENT REQUIRED BY THE DISTRICT OF COLUMBIA TITLE REGULATIONS MAY SUBJECT THE OFFENDER TO THE PENALTY PRESCRIBED BY LAW FOR PERJURY CONVICTION OF WHICH CARRIES AN IMPRISONMENT TERM IN THE PENITENTIARY OF FROM 2 TO 10 YEARS FRAUDULENTLY ALTERING ANY CERTIFICATE OF OR GIN OR OWNERSHIP OR CERTIFICATE OF TITLE OR ASSIGNMENT THEREOF OR OTHER DOCUMENT REQUIRED BY THE DISTRICT OF COLUMBIA TITLE REGULATIONS WILL SUBJECT THE OFFENDER TO THE PENALTY PRESCRIBED BY LAW FOR FORGERY CONVICTION OF WHICH CARRIES A PENALTY OF FROM 1 TO 10 YEARS

FEES

[illegible] FOR CERTIFICATE OF TITLE $1.00 PLUS $2.00 PER $100 OF THE FAIR MARKET VALUE OF VEHICLE [illegible]

(SPACE BELOW FOR DEPARTMENT USE ONLY)

CERTIFICATE DELIVERED TO [illegible] NAME [illegible] ADDRESS [illegible]

DATE [illegible]

[Filed September 28, 1964]

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

In opposition to Defendant Anacostia's motion for summary judgment, Plaintiff sets forth:

1. Instead of a statement of material facts, as required by Rule 9(h) of this Court, said Defendant has submitted only an argument, omitting to state that there are genuine issues of fact set forth in the pleadings.

2. Said Defendant alleges that it had "parted with equitable and legal title" to the automobile in question prior to the accident. Its own Exhibit A states: "Title to car shall remain in Seller (Anacostia) until all amounts owing hereunder are fully paid in cash."

3. In answers to Plaintiff's Interrogatories Defendant Addison stated that Defendant Anacostia had agreed to handle for him all insurance coverage necessary, other than that required by the finance company, and that at the time of the accident he was on his way to Defendant Anacostia, at its request.

4. In answer to Defendant Anacostia's Request for Admissions, Defendant Addison stated that he did not pay for the temporary tags, already on the car when he took it; that Defendant Anacostia kept its "interest in said vehicle intact for all intent and purposes;" that "at the time involved (in the accident) he was in fact on a mission inaugurated and requested to be accomplished by and for and by direction of the defendant A.C.P. Inc."

5. The record is bare of any challenge by Defendant Anacostia of these sworn statements by Defendant Addison, so their truth must be assumed, at least on this motion by Defendant Anacostia, which is unsupported by any affidavit.

[Filed September 30, 1964]

DEFENDANT ANACOSTIA'S REPLY TO THE OPPOSITION OF PLAINTIFF TO ITS MOTION FOR SUMMARY JUDGMENT

The plaintiff has recited in Paragraph Four that the defendant, Addison stated he did not pay for the temporary tags and that defendant, Anacostia kept its interest in said vehicle intact for all intent and purposes.

Defendant Addison, may very well swear to statements but the defendant, Anacostia Chrysler Plymouth, Inc., is not bound by inaccurate statements which are shown to be so through documentary proof. This creates no issue of fact.

The defendant, Addison, was issued temporary tags and again signed the temporary tag application known as Special Use Certificate with the title "owner." See Exhibit "A" attached hereto. The defendant, Addison, did, in fact, pay for the temporary tags. See Exhibit "B" attached hereto.

EXHIBIT A

J. W.

DEALER MUST RETAIN THIS COPY FOR HIS FILES

SPECIAL USE CERTIFICATE

Issued By

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLES

(PLEASE PRINT OR TYPE)

NAME OF OWNER David D. Allison
(FIRST NAME) (MIDDLE NAME) (LAST NAME)

RESIDENCE 3313 N. Capt St. NE DC 2
(NUMBER) (STREET) (SECTION) (APT. NO.)

DESCRIPTION OF MOTOR VEHICLE OR TRAILER

MAKE Plym YEAR 1963 MODEL Fury BODY 4dr sed

SERIAL NO. 3336-152625 MOTOR NO.

PURPOSE OF USE (BE SPECIFIC) Pleasure - New DC Tag

SPECIAL USE TAG NO.

DX- 72116

DATE ISSUED

2-14-63

EXPIRATION DATE
(SEE NOTE)

2-23-63

FEE $1.00

NAME OF ISSUING DEALER: Anac Chry Ply # 37-35

ISSUED IN ACCORDANCE WITH SECTION 48-A, VEHICLE TITLE AND REGISTRATION REGULATIONS

NOTE: NOT MORE THAN 10 DAYS INCLUDING DATE OF ISSUANCE.

W-4

DMV 52-19
(Rev. 11-1-61)

FINAL INVOICE

ANACOSTIA CHRYSLER-PLYMOUTH, INC.

1708 GOOD HOPE RD., S. E. - LUdlow 4-2000
WASHINGTON 20, D. C.

No. 1395

SOLD TO David S. Addison
ADDRESS 3313 N. Capitol St. NE, DC 2

DATE 2/14/63

SALESMAN J. Willis # 371 IGN. KEY 140-CJ TRUNK KEY CV 1235 CAR SOLD ☒ NEW ☐ USED

DESCRIPTION OF MOTOR VEHICLE SOLD

	MAKE	BODY STYLE	COLOR	YEAR	ENGINE NO.	SERIAL NO.	MODEL OR SERIES	OPTIONAL EQUIPMENT ON TRADE-IN
CAR SOLD	Plym. V8	4 dr.sedan	Black	1963		3336- 152625	Fury	3PF 283
TRADE-IN	Ford	4 dr.sed		1955			Falcon	H ml

NUMBER OF INSURANCE COVERAGE — COMPANY — BROKER — AGENT

FIRE X TERM 36 months
THEFT X TERM
COMPREHENSIVE $ X TERM
COLLISION OR UPSET $ 100 TERM
PUBLIC LIA TERM

NO LIABILITY OR PROPERTY DAMAGE INS. INCLUDED

TERMS OF PAYMENT OF TIME PRICE BALANCE

FINANCE COMPANY: Comm. Credit Corp
36 PAYMENTS OF $ 102.45 EACH PAYABLE ON
THE 25th DAY OF EACH MONTH BEGINNING 3/25/63

OPTIONAL EQUIPMENT AND ACCESSORIES

QUAN.	DESCRIPTION	PRICE
	Vinyl trim	T/glass- WS
	Torq. flite	F&R B/Grds.
	Power steer.	Wheel covers
	Heater	OS Mirror
	V8 wipers	Undercoat
		A/Freeze
		WSW Tires
		Radio
		R/S Spkr.
		4 Seat Belts

ON DELIVERY FROM A. C. P.
TYPED WARRANTY SERV. MANUEL
INVOICE

PRICE OF CAR	3391.25
less disc	461.25
OPTIONAL EQUIPMENT AND ACCESSORIES	
CASH SALE PRICE	2930.00
DEPOSIT 117- Paid	140.00
CASH DOWN PAYMENT Pd	86.35
AMOUNT CREDITED FOR ANY TRADE-IN	100.00
TOTAL CASH PRICE BALANCE	2603.65
COST OF INSURANCE	356.00
GOVERNMENTAL CHARGES New 1962 DC Tags	76.35
EXCISE TAX $ 58.80	
PERSONAL PROPERTY TAX 3.00	
INSPECTION FEE 1.00	
REGISTRATION FEE 11.20	
CERTIFICATE OF TITLE 1.00	
NOTARIAL AND RECORDING FEES 2.50	
OTHER (ITEMIZE) Tag- Serv. 2.00	
TRUCKAGE BALANCE	3036.00
INTEREST CHARGE	652.80
TIME PRICE BALANCE	3688.20

I HEREBY CERTIFY THIS INFORMATION IS CORRECT. [illegible]

EXHIBIT B

JA 22

PROCEEDINGS

THE DEPUTY CLERK: No. 7, Herman versus Anacostia Chrysler-Plymouth, Inc., et al.

ARGUMENT IN SUPPORT OF MOTION

[3] MR. GREEN: My name is Samuel Green.

THE COURT: As I understand your motion for summary judgment, it is predicated upon the fact that you made a sale of this car; is that correct?

MR. GREEN: That is correct. Two days prior to the accident, Your Honor.

THE COURT: And this was a routine type of time payment sale, is that correct, on a conditional bill of sale?

MR. GREEN: That is correct, sir.

THE COURT: I believe Mr. Silberberg indicates that there had been no charge for your client's plates, the temporary plates or something of that kind. What was the situation there?

MR. GREEN: I think this is answered, Your Honor, by Exhibit B which is attached to Anacostia's reply to the opposition of the plaintiff to the motion for summary judgment. In other words, this is the bill of sale and if Your Honor will look at the last item on the right, which is indented, it shows "T. Tag Service — $2.00."

There is proof, Your Honor, that in the original [4] bill of sale which was signed on February 14th, that the defendant Addison did in fact pay for the tag service.

Also attached to the opposition as Exhibit A is the special use certificate, which is the temporary tag certificate. This shows, Your Honor, that the defendant Addison again on February 14th, 1963, signed as owner when he applied for the temporary tags.

So I think we have discounted the fact that — In answer to interrogatories or in his admissions, he said that he did not pay for the

temporary tags. So I don't think there is any issue of fact as far as the case is concerned on these points. I think we did in fact sell the car on February 14th.

I did say in my original motion for summary judgment that we had negotiated the conditional sales contract to the Commercial Credit Corporation on February the 14th. Actually, the exhibit which is attached to this original motion shows that the 15th day of February rather than the 14th.

So, actually as of the date of the accident, Anacostia Chrysler had neither legal title nor equitable title and had done everything they could to transfer complete control, possession and everything out of its hands.

The defendant had no right to tell the defendant Addison where to drive the car, when to drive the car, or to take the car back. Everything was completed no later than [5] February the 15th, which was at least one day prior to this accident, sir.

ARGUMENT IN OPPOSITION TO MOTION

MR. SILBERBERG: Nathan L. Silberberg, attorney for the plaintiff.

Your Honor, the defendant No. 2 is now in the courtroom, that is, Mr. Addison. He is no longer represented by counsel. Counsel who had appeared for him, as Your Honor may know, has passed away since the time of his appearance and there has been no substitution of counsel for him.

When I received the motion for summary judgment, I telephoned Mr. Addison to tell him that it was of importance to him, this motion which he had also received that day, and to advise that he obtain counsel and not delay the matter because of the significance of this motion not only insofar as the plaintiff is concerned but insofar as his position is concerned.

Now, dealing with the motion itself as it concerns the plaintiff: I find here no statement of undisputed facts as called for under the

rules. There is a statement of facts, but there is nothing to say that they are undisputed. As a matter of fact, they are clearly disputed.

What transpired on the Thursday of the purported [6] sale is known by only two individuals to the best of my knowledge: One is the defendant Addison, the purchaser; the other is a Mr. Willis, who is the salesman of Anacostia with whom the answers to interrogatories show that he dealth.

There is nothing in the record whatsoever from Mr. Willis as to what constituted the transaction. We do have, however, from Mr. Addison repeated in answers to interrogatories the fact that he was required to return on the Saturday in question — the accident occurred less than 48 hours after the purported sale — at the specific direction and request of defendant Anacostia, through Mr. Willis, to do something for them; that Mr. Willis had assured him that the insurance coverage, meaning liability insurance coverage, had been or was being arranged for him, Addison, by Mr. Willis.

He said that the temporary tags which were on the car, and about which Your Honor questioned Mr. Green, at the time that he came there on that Thursday to take possession. They were not his tags, they were not assigned to him but were already on the vehicle.

Things which happened in the course of that transaction and those 48 hours will, I believe, coupled with the writings, the printed forms in this case, enable a jury to determine whether at the time of the accident the defendant Anacostia was or was not the owner of the car. [7] I specifically direct Your Honor's attention, as I did in my opposition, to just one statement which appears as part of the terms and conditions of the bill of sale. This is found on the reverse side of what is designated Exhibit A attached to the original motion. The document is entitled, Retail Installment Contract and while my copy is rather difficult to read, the reverse side is very clear. The reverse side is entitled, Terms and Conditions. The reverse side starts off, "Title of Car shall remain in Seller" — this is Anacostia — "until all

amounts owing hereunder are fully paid in cash." It goes on to speak of assignment by the seller but then specifies in considerable detail the restrictions upon use, place and so forth, which are incumbent upon the so-called purchaser.

This is perhaps a conventional conditional sales contract of the finance company involved in this situation, but that finance company is not a party to this litigation. I respectfully submit that upon trial of the issues before a jury, this will be among the elements — with, of course, instructions from the Court — for the jury to consider as to who was the owner of the car on that morning.

This, coupled with what Mr. Addison presumably is prepared to testify to because his statements were prepared with the assistance of his then counsel and are under oath. [8] What Mr. Willis, the salesman, may testify to, no one has set forth here. Certainly the affiant or the deponent on behalf of Anacostia has no personal knowledge of the transaction.

I return to my original statement with reference to the form of the motion which, in my humble judgment, does not comply with the rule of this Court for a statement of undisputed facts which is a necessity for a motion for summary judgment. Had such a statement been made, it would be clear, it seems to me, from the record — as limited as the record is in this case — that the fundamental facts insofar as Anacostia are very much in dispute and require resolution. And I need not tell Your Honor that where there is any fundamental fact at issue which is not made clear beyond question in the pleadings, that the forum for its determination is the court of trial and jury.

THE COURT: You say that the disputed issues of fact are specifically what transpired in the 48 hours between the sale or purported sale of the car and the time of the accident, is that correct?

MR. SILBERBERG: That is correct, sir. It is less than 48 hours. I think the sale occurred on Thursday evening and the accident occurred on a Saturday morning, so it might be closer to 36 hours. But

what actually transpired, I do not [9] know beyond the sworn answers of the defendant Addison.

Thank you.

Mr. Addison is here without counsel, as I have pointed out to Your Honor.

REBUTTAL ARGUMENT IN SUPPORT OF MOTION

MR. GREEN: May it please the Court, there was a good reason for not getting an affidavit from Mr. Willis. The reason is that the papers speak louder than anything Mr. Willis can say.

THE COURT: What do you say about your failure to file a statement of non-disputed facts, as required by local Rule 9(h)?

MR. GREEN: I thought that the facts that we filed, Your Honor, are undisputed facts because if he says by word I say something different than appears on the written record, I think the written record speaks for itself.

When Mr. Addison filed his application as the owner of this vehicle with the Department of Motor Vehicles to get tags and listed himself as the owner on February the 14th, I think this speaks louder than any affidavit or any other thing that I could put into the record here.

The certificate of title application is part of the record that I have filed in conjunction with my statement of [10] facts.

THE COURT: What do you say about counsel's statement that in answer to the interrogatories, there is an indication that the defendant Addison was on some mission for your defendant on the Saturday when the accident occurred?

MR. GREEN: I believe counsel is referring to answer 21 in the answers to interrogatories by defendant Addison, in which he says, "I haven't got the title." No. 22, "No." And then he goes on to say, "I was not on any errand for any other person but was on my way to ACP Inc. at their request to arrange closing of deal and insurance coverage."

Now, Your Honor, I say the retail or the conditional sales contract, which is called a retail installment contract in this house, shows that the insurance coverage is listed right on this contract. It's a collision insurance coverage. There is a charge for that. Also in the bill of sale which shows that this transaction was completed on February 14th, 1963, likewise shows that the contract was completed on that date. In the certificate of title, it shows that it was notarized, subscribed and sworn to on the 14th day of February, 1963.

I don't see what the defendant Addison can be referring to when he says, "I am going there to complete a deal," [11] which shows that he has a conditional sales contract, a bill of sale, the tags which I would like to speak to momentarily if I may, sir.

He said in the admissions, admission No. 2, in which he refers to the fact that he never paid the prescribed fee. I don't think there is an issue of fact when a statement signed by him and a bill of sale show he has paid the prescribed fee.

THE COURT: You lost me.

MR. GREEN: Well, I'm saying that orally the defendant Addison has stated, "I did not pay the prescribed fee for the temporary tags;" but the bill of sale which has been issued to him shows he has in fact paid the prescribed fee. I don't believe that this would create any issue of fact because the documentary proof that is submitted in connection with the motion for summary judgment shows clearly that this is not a true statement by him.

I would say this, Your Honor: As far as the temporary tags being on the vehicle, this is standard procedure. When a car is sold, the tags are put on the vehicle by the seller only after the special use certificate has been signed because the dealers buy these tags in volume from the District of Columbia and he doesn't have to go down to the District of Columbia in order to purchase these tags.

THE COURT: Anything more?

[12] MR. GREEN: That is all I have, sir.

THE COURT: Is there anything that the defendant Addison wants to say?

MR. ADDISON: No, Your Honor.

THE COURT: Very well

Do you have anything more?

REBUTTAL ARGUMENT IN OPPOSITION TO MOTION

MR. SILBERBERG: If the position of the defendant Anacostia is that the written word is all-controlling and that nothing that was said or nothing that was done which in any way contradicts the series of writings here, obviously, we have no place in Court; but that is not the rule. This set of writings is just one of the bits of evidence which is to be produced.

If, for example — I don't suggest this because I don't know — this defendant Anacostia's salesman Willis were to come into court and to tell the Court and to tell the jury, "Yes, I told this man that we would keep the title to the car, that there would be no risk upon him until after he came on back and we completed getting his insurance," if he were so to testify regardless of what the writings say, I think it is manifest that the ownership and control of the vehicle was in the defendant Anacostia for the purposes of the Safety Responsibility Act, the Motor Vehicle Act of the District, on the morning in question.

I respectfully submit that at the time of trial, all of these facts should be weighed because it is upon that determination that the result for this widowed plaintiff depends.

Thank you sir,

THE COURT: Anything more?

MR. GREEN: No, Your Honor.

THE COURT: I would like to reread the pleadings in this matter in the light of counsel's presentations this morning. I will do so and pass on the matter promptly.

[Filed October 27, 1964]

ORDER

This matter came on for hearing at this term of Court upon the Motion of the defendant, Anacostia Chrysler Plymouth, Inc., for a summary judgment and the supporting documents submitted therewith and the Opposition thereto by the plaintiff, and after oral argument by the parties, and upon consideration thereof, it is by the Court, this 27th day of October, 1964,

ORDERED, that the Motion for Summary Judgment of defendant, Anacostia Chrysler Plymouth, Inc., be and the same hereby is granted.

EDWARD A. TAMM
Judge

[Filed November 27, 1964]

NOTICE OF APPEAL

Notice is hereby given this 27th day of November, 1964, that Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the order of this Court entered on the 27th day of October, 1964, granting summary judgment in favor of Defendant Anacostia Chrysler-Plymouth, Inc.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19107

ANNA HERMAN,

Appellant

v.

ANACOSTIA CHRYSLER-PLYMOUTH, INC.,

Appellee

Appeal From Judgment of the United States District Court for the District of Columbia

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STATEMENT OF QUESTIONS PRESENTED

In the opinion of the Appellee the questions are:

1. Did the Court properly grant a motion for summary judgment when the Statement of Facts supported by Exhibits show there was no genuine issue of material facts although some facts may be in dispute.

2. May a motion for summary judgment be defeated by evidence too incredible to be accepted in light of documentary evidence to the contrary or mere conclusions or denials unsupported by evidence.

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OTHER CITATIONS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19107

ANNA HERMAN,

Appellant

v.

ANACOSTIA CHRYSLER-PLYMOUTH, INC.,

Appellee

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

Appellant, a pedestrian, was injured on February 16, 1963, by an automobile owned and operated by co-defendant, David Addison. The Appellant filed a complaint against the Appellee, conditional seller, and co-defendant alleging that the automobile was owned and controlled by the Appellee (JA-2).

On February 14, 1963, David Addison purchased an automobile from the Appellee, paid a consideration, received his Car Invoice (JA-22), signed a Retail Installment Contract (JA-15) (which was negotiated to Commercial Credit Corporation on February 14, 1963), applied for his Special Use Certificate as owner (JA-21) and applied for a Certificate of Title to this motor vehicle as owner (JA-17), all on that date.

In Answers to Interrogatories the co-defendant, David Addison, testified that he secured possession of the automobile involved in this accident on February 14, 1963 (JA-5, 8, Question 19) and was driving same on the morning of the accident (Q. 1), when this accident took place. However, he does in Admission to Requests for Admissions state he did not pay for the issuance of temporary tags and that the Appellee retained its interest in said automobile for all intents and purposes (JA-10). In these same pleadings the co-defendant, Addison, testified that he was on his way to the Appellee's place of business to arrange for the closing of the deal and insurance coverage (JA-10).

The Appellee moved for summary judgment in its favor on the basis of the documentary evidence that Appellee had parted with both legal and equitable ownership prior to the date of the accident. The lower Court granted the motion of Appellee and it is from this Order that the Appellant appeals.

STATUTES AND RULES INVOLVED

40 D. C. Code 101(c) - The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

40 D. C. Code 418(g) - Owner - A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an arrangement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

Rule 56, Federal Rules of Civil Procedure - (c) . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law . . .

Rule 9(h), U. S. District Court - Motions for Summary Judgment. In addition to the points and authorities required by subparagraph (b) of this Rule there shall be served and filed with each motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure a statement of the material facts as to which the moving party contends there is no genuine issue. . . .

In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion.

SUMMARY OF ARGUMENT

The lower Court properly found that Rule 9(h), United States District Court was fully complied with. The Court properly granted the Appellee's motion for summary judgment although some facts were in dispute, for there was no genuine dispute of material facts. Hopes and expectations cannot create a genuine issue of fact. The parol evidence rule excludes

oral testimony which attempts to contradict formal records on file and cannot be relied upon to create a genuine issue of fact. The Court was justified in granting summary judgment when the evidence was such that it could direct a verdict.

A motion for summary judgment may not be defeated by evidence too incredible to be accepted. The Appellant relies upon the testimony of the co-defendant, Addison, and his response to request for admission to show that the Appellee had not sold the automobile in this accident or that the Appellee, if he sold the automobile, maintained such an interest in same that Appellee was the owner. The co-defendant by the documentary evidence received a Bill of Sale, signed a Retail Installment Contract, operated as owner under special tags and applied for a Certificate of Title as owner, leaving Appellant with bare legal title as a security interest which was negotiated to a third-party prior to the accident. The Court had to reject the oral statements of the co-defendant which contradicted his written acknowledgments to the contrary.

ARGUMENT

1. The Court May Properly Grant a Motion for Summary Judgment Although Some Facts Are in Dispute if There Is No Genuine Issue as to a Material Fact.

The purpose of Rule 56(c) F.R. Civ. P. has been interpreted to mean that the Court may on motion dispose of cases where there is no genuine issue of fact even though an issue may be raised. *Miller v. Miller*, 74 App. D.C. 216, 122 F.2d 209. The Appellee readily concedes that there are disputed issues of fact. However, the Appellee contends there is no genuine issue on any material fact. In her first argument the Appellant complains that Appellee's motion contained no statement of undisputed facts because it ignored the sworn statement of co-defendant. The motion for summary judgment contained the language that there is no genuine issue as to any material fact and had affixed to it the Statement of Facts (JA-12, 13), thus fully complying with

District Court Rule 9(h). The Appellee carefully considered the sworn statements of the co-defendant and concluded, as did the Court below, that there was no genuine issue of material fact.

Let us examine carefully what the Appellant considers disputed facts; the co-defendant states that he did not pay for the issuance of temporary tags, nor did he receive the temporary tags from the District of Columbia Government (JA-9). Does this create a genuine issue and is this issue material, if genuine? The Special Use Certificate (JA-21) shows clearly the signature of David S. Addison as owner for temporary tag No. DX 73 118; issue date - February 14, 1963, expiration date February 23, 1963, with the name of issuing dealer, the Appellee. The car invoice clearly shows that the co-defendant paid $2.00 for temporary tag service (JA-22). True, there is a dispute, but the position of the co-defendant is without merit.

In Answer to Appellee's Interrogatory No. 25, the co-defendant states:

> "I was not on any errand for any other person but was on my way to A.C.P., Inc., at their request to arrange closing of deal and insurance coverage."

The so-called "deal" was closed on February 14, 1963 when the co-defendant received his Car Invoice (JA-22), signed a Retail Installment Contract (JA-15) and applied for his Certificate of Title (JA-17) and drove away in his car. The co-defendant, months after the fact, attempts to change formal records on file with the Department of Motor Vehicles showing he is clearly mistaken as to ownership of this automobile on February 16, 1963.

The Appellant attempts to show a dispute on fact by contrasting oral statements by co-defendant contradicting formal signed documents by this same co-defendant. In effect, the Appellant argues, the co-defendant by being inconsistent raises an issue of fact. The summary judgment rule is intended to prevent trials unless the opposite party has some facts which create a genuine issue, and not in cases where there

are no facts whatsoever, but some hope based upon a jury's speculation of sympathy, passion or prejudice. Parol evidence is not admissible to contradict, vary or impeach official records or documents. (32A C.J.S. Evidence, Sec. 876). The only evidence offered to be presented in opposition to the undisputed material facts of Appellee is excluded by the parol evidence rule. Summary judgment may be granted when the only evidence relied upon to create a genuine issue of facts was barred by the parol evidence rule. *Booth v. Barber Transport Co.*, 1 F.R. Serv. 2d 56a 23, Case 1, 256 F.2d 927; *Hill v. Brandywine Fiber Products Co.*, 20 F.R. Serv. 56c 41, Case 1; 121 F. Supp. 108.

If testimony is such that a directed verdict would have to be granted, the Court is Justified in granting summary judgment. *Byrnes v. Mutual Life Ins. Co. of N. Y.*, 217 F.2d 497; *Dewey v. Clark*, 1950, 86 U.S. App. D.C. 137, 143; 180 F.2d 766, 772. *Radio City Music Hall Corp. v. United States*, 135 F.2d 715.

The Appellant is mistaken in her belief that a summary judgment may not be granted where there are disputed facts, the test set forth is whether there is a genuine issue on a material fact. The Appellee submits there is no genuine issue on any material facts, and the Court below properly granted the motion. As the Court said in *Hill v. Brandywine Fiber Products Co., supra*, a summary judgment should be granted when the only issue is resolved by documents. Clearly, there was no material genuine issue.

2. A Summary Judgment May Not Be Defeated by Evidence Too Incredible To Be Accepted.

The Court has said on numerous occasions that a summary judgment may be entered when it is apparent that an issue raised in the pleadings is a sham one. *Edward B. Marks Music Corp. v. Continental Record Co., Inc.*, 21 F.R. Serv. 56c 41, Case 2; 222 F.2d 488; *Byrnes v. Mutual Life Ins. Co. of N. Y., supra.*

The Appellant argues that ownership of the automobile is in dispute because she recites in her complaint that said automobile was owned and controlled by the Appellee, which allegations the Appellee denied. (Appellant's Brief, p. 4).

When the Appellee makes out a convincing showing that genuine issues of facts are lacking the Court requires that the adversary demonstrate by receivable facts that a real, not a formal controversy exists and this he cannot do through an allegation and denial in pleadings. *Bruce Construction Corp., et al. v. United States of America for use of Westinghouse Electric Supply Company*, 242 F.2d 873; *Radio City Music Hall Corp. v. United States, supra; Dewey v. Clark, supra.* One bit of evidence proposed to be offered by Appellant as to ownership is the usual language contained in the Installment Sales Contract, "Title to Car shall remain in Seller until all amounts owing hereunder are fully paid in cash." The ownership of a conditional seller has been described as nothing more than a security interest invokable only upon default by the buyer." *Dist. of Col. v. Hamilton Nat'l. Bank of Washington*, 76 A.2d 60, Mun. Ct. of App. for the Dist. of Col. Such an arrangement is in the nature of a mortgage and the vendor, in substance retains nothing more than a lien for his security. This Court said in *Zweig v. Schwartz*, 31 A.2d 857, 859:

> "In this District the conditional vendee has been described as 'a bailee for a specific purpose,' and while it is well established in this jurisdiction that the conditional sale is not a mortgage and title does not pass, yet such an arrangement is in the nature of a mortgage and the vendor, in substance, retains nothing more than a lien for his security."

Ballinger v. West Publishing Co., 44 App. D.C. 49, defines the interest of the conditional seller:

> ". . . the authorities upholding equity jurisdiction, 'establish the principle that while such a sale is not a mortgage, and the title to the personal property does not pass from the conditional vendor to the vendee, still it is in the nature of a mortgage, and is nothing more than a lien retained as a provision for the security of the payment of the purchase money.'"

Dist. of Col. v. Hamilton Nat'l. Bank of Washington, supra, defines the conditional sales agreement as nothing more than a security interest invokable only on default.

The Motor Vehicle Safety Responsibility Act, Title 40, Section 418 (D.C. Code 1961 Ed.) provides:

> DEFINITIONS:
>
> (g) "OWNER: — A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, **then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Chapter.**" (Emphasis supplied)

Ownership for purpose of Registration is defined in Title 40, Section 101, (D.C. Code, 1961 Ed.) as

> "(c) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to

> possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations."

Under either or both Sections of the Code, the co-defendant is the owner and not the Appellee.

In *Gasque v. Saidman*, 44 A.2d 537, we find a factual situation somewhat similar to this. The plaintiffs' parked vehicles were struck one night by a motor vehicle operated by Blakely who had the permission of Logan to operate it. The vehicle was a taxicab and bore the name "John R. Gasque, Equity, No. 3." The cab was titled in the name of Appellant John Gasque but he had transferred the title to Logan. The record title of the taxicab was in the name of Gasque and also a certificate of the Office of Defense Transportation, tire ration application, gas allotment papers and the Public Utilities Commission Certificate.

Trial was by jury and verdict was for plaintiffs against both defendants; appeal followed and the Court reversed, saying:

> "Those circumstances standing alone and unexplained would give rise to the presumption that the vehicle was at the time of the accident being operated by an agent of Gasque and with his consent. This was the common law rule, and it is clearly the rule today under our Financial Responsibility Act. (case cited). The effect of the rule in this case was to shift the burden of proof and require Gasque to show that the car was not being operated with his consent. He did more than that. **He proved that he was not even the owner of the cab, within the meaning of the statute. He produced an agreement of Conditional sale by which he had some months before transferred the taxicab to Logan for a consideration of $2000.00.** (Emphasis supplied). The agreement described Gasque as seller and Logan as buyer; it provided for weekly installments and **reserved the legal title in Gasque** (Emphasis supplied) pending payment of

the full purchase price, with the usual right of repossession in case of default.

He had divested himself of possession and entrusted it to Logan. **By the written agreement he had retained title solely for the purpose of security.** The other attributes of ownership such as possession, use and control belonged to Logan; Gasque had retained nothing more than a lien for the unpaid purchase price. As we see it, **liability against Gasque cannot be fashioned from the single fact that he owned the naked legal title to the taxicab.**

* * *

Looking at all the circumstances, we are forced to conclude that **Gasque had as a matter of law clearly overcome the statutory presumptions of ownership and agency,** (emphasis supplied) that there were no facts or inferences on which the jury could properly have based liability, and that it was error to have submitted the question of his liability to the jury."

The case of *Mason v. Automobile Finance Co.*, 73 App. D.C. 284, 121 F.2d 32, was a case involving a chattel mortgage. Worthy owned the automobile in question. He obtained a loan from the defendant, which was secured by a chattel mortgage. The car was in a garage and Worthy was in default of his payments and subsequently the defendant took possession of the car and made arrangements with one Whitely to take over the payments on the car. While negotiations were pending, Whitely was involved in the accident sued upon here.

The defendant was found to be the owner under the Financial Responsibility Act:

> "'Owner' and 'ownership' for purpose of the Act is not defined. This meaning is left for judicial determination and this should be made so as to give effect to the objects and purposes of this statute."

* * *

"One who is no more than a chattel mortgagee is not an owner. Nor does he become such merely by virtue of a default by the mortgagor. That is true though the right to possession may accrue immediately upon default. Something more than a lien on the property, though presently and summarily enforceable, is necessary. In the absence of some definite statutory criterion of ownership, we think **the purpose of the statute was to place the liability upon the person in a position immediately to allow or prevent the use of the vehicle** (emphasis supplied) and to do so by giving a lawful and effective consent or prohibition to its operation by others. The object was to control the giving of consent to irresponsible drivers by the one having that power rather than to impose liability upon one having a naked legal title with no immediate right of control."

* * *

". . . if the car was rightfully in defendant's possession and its possession was such that it had the power and the legal right to permit its use by another, it becomes the owner within the meaning of the statute. . . "

The Court found that the chattel mortgagee had taken over complete possession of the automobile because of the default of the purchaser and had given permission to the driver to have the car. In the case before the Court, Appellee had no right to say where or when Addison might drive, for it had completely parted with ownership.

The case of *Burt v. Cordover*, 117 A.2d 116, is another case involving ownership. Here, Appellees, a mother and son were joint owners of a car which, by written agreement, they were to sell to one, Bennett. The latter made a deposit of $50.00, the balance of $225.00 to be paid the next day upon delivery of the car. On the next day, Appellees signed assignment of title. The car was then turned over to Bennett, keys, registration card and assigned title certificate.

A few days later when Bennett was driving the car on his own business, he collided with Burt's car, etc. At that time the car was still registered to Appellees.

The Trial Court denied recovery against Appellees on ground that they were not the "owners" of the auto within the meaning of the statute.

The Court said at page 117,

> "There was a meeting of the minds, payment of the purchase price, and delivery of the vehicle . . . Bennett had lawful possession of the vehicle at the time of the accident and appellees had no authority or right to control or interfere with his use of it. From all practical aspects Bennett was the owner of the vehicle. Indeed, he was the holder of the legal title because he had bought and paid for the vehicle and it had been delivered to him . . ."

The owners in the Burt case had done less than the Appellee here had done to part with possession, for here the application for title had been mailed to the Department of Motor Vehicles some two days prior to the accident.

Could the Appellee tell the co-defendant where he could drive on the 14th, the 15th, the 16th? Certainly not! The remaining arguments as to disputed issues presented by the Appellant have been already answered above and will not be repeated here.

The Appellant cites the case of *Edwards v. Mazor Masterpieces, Inc.*, (1961) D.C. App. ___ ; 295 F.2d 547. That case is readily distinguished, for as the Court pointed out, factual issues did exist: "reasonable probability that the bed was dangerous; defendant knew or from the facts known to him, should have realized that it was likely to be dangerous; that he had no reason to think that the purchaser would realize the danger; that he made no reasonable effort to give warning of the dangers; and that the danger caused the boy's death. . ."

The case of *Dewey v. Clark, supra,* is likewise distinguishable, for this case involved the good faith of a landlord in seeking possession of an apartment for his own use. That decision does lay down a series of rules which govern the Court in passing on summary judgment.

> "Our study of the question makes the following points clear: (1) Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined. Once it is determined that there is such an issue, summary judgment may not be granted; (2) In making this determination doubts (of course the doubts are not fanciful) are to be resolved against the granting of summary judgment; (3) There may be no genuine issue even though there is a formal issue. Neither a purely formal denial nor, in every case, general allegations, defeat summary judgment. On this point the cases decided by this court must rest on their own facts rather than upon a rigid rule that an assertion and a denial always preclude the granting of a summary judgment. Those cases stand for the proposition that formalism is not a substitute for the necessity of a real or genuine issue. Whether the situation falls into the category of formalism or genuineness cannot be decided in the abstract; (4) If conflict appears as to a material fact the summary procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true; (5) To support summary judgment the situation must justify a directed verdict insofar as the facts are concerned."

Applying these tests to the instant case, it becomes readily apparent:

1. Only the existence of a genuine and material issue may defeat a motion for summary judgment. Where is a genuine material issue — the co-defendant, Addison's, statement that he did not pay for the tags and that they were on the car when he took posses-

sion? The evidence otherwise is overwhelming even if the co-defendant's evidence were admissible.

Does ownership create a genuine material issue? The law is too clear on this subject to be contradicted. Does Mr. Addison's statement that he was on the way to close the deal and arrange insurance coverage? Again, this oral testimony is inadmissible under the parol evidence rule and the evidence otherwise is overwhelming.

2. All doubts raised by Appellant are fanciful and not real.

3. There may be no genuine issue though there is a formal issue. Neither a formal denial nor general allegations defeat summary judgment. The assertion by Appellant in a complaint that Appellee owned and controlled the automobile is nothing more than a formal or general allegation.

4. The evidence offered by Appellant is too incredible to be accepted by reasonable minds. His "deal" was closed when he signed the Retail Installment Contract, received his Car Invoice, applied for his Certificate of Title and drove off the Appellee's lot with his temporary tags affixed to his automobile.

5. Under all the credible and admissible testimony the Court would have been compelled to direct a verdict **in favor of the Appellee**, for **it was** the co-defendant and not the conditional seller Appellee **who** owned the vehicle on the date of the accident.

CONCLUSION

The summary judgment granted in favor of the Appellee should be affirmed.

Respectfully submitted,

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